

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WENDY GUZMAN, INDIVIDUALLY	§§	
AND AS NEXT FRIEND OF TG, A	§§	
MINOR, PLAINTIFF	§§	
	§§	NO. 4:07-cv-03973
V.	§§	(JURY DEMANDED)
	§§	
MEMORIAL HERMANN HOSPITAL	§§	
SYSTEM D/B/A MEMORIAL HERMANN	§§	
SOUTHEAST HOSPITAL, DEFENDANT	§§	

PLAINTIFFS' MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT JOINING MEMORIAL HERMANN
HOSPITAL SYSTEM AS A DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Wendy Guzman and Dominic Guzman, individually and as next friend of TG, a minor, file their motion for leave to file an amended complaint against Memorial Hermann Hospital System, d/b/a! Memorial Hermann Southeast Hospital, and in support of this motion state:

- 1) On October 28,2009, the Court granted the motion of Defendant Philip Haynes, M.D., Ph.D., to join Memorial Hermann Southeast Hospital as a responsible third party.
- 2) In order to determine the responsibility of Memorial Hermann Southeast Hospital and to prevent allocation of negligence to a party who is not present or represented in Court, Plaintiffs must rejoin Memorial Hermann, and exercise their rights under Section 33.004(e) of TEX. CIV. PRAC. & REM. CODE to join Memorial as a party defendant. Should the court and jury determine that there is sufficient evidence that Memorial Hermann Hospital System's negligence proximately caused injury to TG, then the damages to Plaintiff should attach to an actual claim against Memorial, rather than merely diminish the liability of Dr.

Haynes.

3) TEX. CIV. PRAC. & REMEDIES CODE § 33.004(e) provides:

If a person is designated under this section as a responsible third party, a claimant is not barred by limitations from seeking to join that person, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person not later than 60 days after that person is designated as a responsible third party.

In *Moreno v. Palomino-Hernandez*, 269 S.W.3d 236 (Tex. App. – El Paso, appl for writ pending), the El Paso Court of Appeals held that it was an abuse of discretion not to permit the Plaintiff to join as a defendant an emergency room physician because the scheduling order for joinder had passed. The motion to designate was filed by the defendant after the docket control order deadline for joinder of parties (as is present in Guzman), and the Plaintiff moved within 60 days to join a defendant that had previously been a party but had been nonsuited (as is present in Guzman). The Court of Appeals stated at page 243:

Considering the limited waiver of the limitations bar contained in section 33.004(e), it is apparent that the purpose of the statute is to permit a plaintiff to join as a defendant a person designated as a responsible third party by another defendant.

Since this is the legislative purpose of a clearly defined statute, which is directly applicable to the Guzman case, Plaintiffs respectfully request that the motion for leave to file an amended petition joining Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital be granted.

4) This motion is timely made.

5) Certificate of Conference. Plaintiffs have conferred with counsel for the defendant, who indicated that his clients strongly oppose this motion. Counsel cannot agree on a disposition of this motion.

Wherefore, premises considered, Plaintiff prays that this Motion for Leave to File Amended

Complain joining Memorial Hermann Hospital System be granted.

RESPECTFULLY SUBMITTED

/s/ Phillip A. Pfeifer

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CERTIFICATE OF SERVICE

I, Phillip A. Pfeifer, attorney of record for Plaintiffs, hereby certify that a true and correct copy of this Motion for Leave to File Amended Complaint. was served on all counsel of record on October 29,2009 in accordance with the Federal Rules of Civil Procedure by electronic document transfer by the Clerk of the Court.

/s/ Phillip A. Pfeifer
